

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION**

<b>IN RE:</b>	)	<b>CASE NO. 10-93904-BHL-11</b>
	)	
<b>EASTERN LIVESTOCK CO., LLC</b>	)	
	)	
	)	<b>Chapter 11</b>
<b>Debtor.</b>	)	
	)	

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**MOTION FOR AN EXPEDITED HEARING ON THE EMERGENCY MOTION UNDER  
11 USC §§ 303(f) AND (g), 105 AND 1104(a) FOR AN ORDER APPOINTING AN  
INTERIM TRUSTEE AND AUTHORIZING AND DIRECTING INTERIM TRUSTEE  
TO OPERATE DEBTOR'S BUSINESS**

Petitioning creditors David L. Rings, Southeast Livestock Exchange, LLC, and Moseley Cattle Auction LLC (collectively, the "Petitioning Creditors") by and through counsel, jointly move this Court for an Expedited Hearing (the "Expedited Hearing Motion") on the Emergency Motion Under 11 USC §§ 303(f) and (g), 105 and 1114(a) Appointing an Interim Trustee and Authorizing and Directing the Interim Trustee to Operate Eastern Livestock Co., LLC's (the "Debtor") business (the "Trustee Motion"). In support of the Expedited Hearing Motion, the Petitioning Creditors hereby state as follows:

**PRELIMINARY STATEMENT**

1. On December 6, 2010, the Petitioning Creditors filed an involuntary chapter 11 petition against the Debtor (the "Involuntary Petition") and the Emergency Motion Under 11 U.S.C. §§ 105, 303, 363 and 543 for an Order Permitting the Current Receiver to Act as a Custodian to Continue to Administer Property and Prohibiting Debtor's Management From Exercising any Rights Related to the Property (the "543 Motion") with this Court. The Involuntary Petition and the 543 Motion were filed in response to Debtor's alleged unlawful and

fraudulent conduct undertaken for its own benefit and to the detriment of the Petitioning Creditors. Specifically, the Involuntary Petition and the 543 Motion were based on, information and belief, *inter alia*:

- (1) The Debtor's issuance of between \$81,000,000 and \$130,000,000 of bad checks;
- (2) The U.S. Department of Agriculture ("USDA") and USDA's Grain Inspection, Packers and Stockyards Administration ("GIPSA") investigation of the Debtor for violations of the Packers and Stockyards Act;
- (3) The Declarations of David L. Rings ("Rings Declaration"), John F. Moseley, III of Moseley Cattle Auction LLC ("Moseley Declaration") and John M. Queen, III of Southeast Livestock Exchange, LLC ("Queen Declaration" and together with the Rings and Moseley Declarations, the "Creditor Declarations");
- (4) Verified and Amended Complaints filed on November 9, 2010 and November 19, 2010, respectively, (the "Complaints") against the Debtor in case styled, *Fifth Third Bank v. Eastern Livestock Co., LLC*, Case No. A1010267, Court of Common Pleas, Hamilton County, Ohio (the "Ohio Litigation"); and
- (5) the Order for the Immediate Appointment of Receiver, entered by the Honorable Robert Winkler on November 9, 2010 in the Ohio Litigation (the "Receiver Order"). The Amended Complaint and the Receiver Order are incorporated herein by reference and jointly attached hereto as Exhibit A. The Creditor Declarations are attached hereto as Exhibit B.

#### **JURISDICTION AND VENUE**

2. As of the filing of the Trustee Motion, no order for relief has been entered in the Debtor's case. The Receiver appointed by the Receiver Order in the Ohio Litigation is in possession of Debtor's property.

3. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157(a)(b)(1) and 1334(b) and the standing order of reference of the United States District Court for the Southern

District of Indiana, dated July 11, 1984. The statutory predicates for the relief sought are sections 303(f) and (g), 105 and 1104(a) of title 11 of the United States Code (the "Bankruptcy Code").

4. This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A) and (O). Venue is proper under 28 U.S.C. §§ 1408 and 1409(a).

### **FACTUAL BACKGROUND**

5. On November 3, 2010, a livestock seller complained to GIPSA that a payment check received for livestock sold to the Debtor had been returned due to insufficient funds. GIPSA Release #96-10 (November 22, 2010) (the "GIPSA Statement"). The GIPSA Statement is attached hereto as Exhibit C.

6. On November 4, 2010, GIPSA deployed investigators to the Debtor's headquarters to investigate the original and subsequent complaints of failure to pay for livestock. GIPSA also began deploying rapid response teams to markets nationwide that could be impacted by the Debtor's "financial failure." The Agency also began issuing letters to unpaid sellers encouraging affected producers to submit bond claims. As of November 17, 2010, GIPSA issued 743 letters. *See* the GIPSA Statement.

7. On November 10, 2010, Capital Indemnity Corporation served notice on the Debtor cancelling the Debtor's surety bond for \$875,000, effective December 30, 2010.

8. On Friday November 19, 2010, GIPSA filed an administrative complaint charging Eastern Livestock Company, LLC, and Tommy P. Gibson, one of its principals, with:

- (a) Failure to pay for livestock purchases;
- (b) Failure to pay timely for livestock purchases; and
- (c) Failure to maintain an adequate bond.

9. The Debtor is one of the largest cattle brokerage companies in the United States, with operations in 11 states across the Mid-South, Midwest, and West. *See* the GIPSA Statement.

10. GIPSA currently estimates that the Debtor owes more than \$130 million to 743 sellers in 30 states. As of November 22, 2010 GIPSA had documented \$81 million in returned checks and is currently onsite at the Debtor's headquarters assessing the situation, investigation possible violations of the Packers and Stockyards Act, and working to ensure that all available protections are afforded to producers. *See* the GIPSA Statement.

11. A detailed relevant factual background leading to the commencement of the Complaints and the Receiver Order is set forth in Exhibit A.

12. The Debtor has not yet answered the Complaints in the Ohio Litigation or contested the Receiver Order.

#### **RELIEF REQUESTED**

13. By the Expedited Hearing Motion, the Petitioning Creditors respectfully request this Court to schedule an expedited hearing on the Trustee Motion on Monday, December 13, 2010, at 1:30 p.m. Eastern Time at the United States Bankruptcy Court for the Southern District of Indiana, 121 West Spring Street, New Albany, Indiana 47150.

14. Copies of the Expedited Hearing Motion and the Trustee Motion were served on the United States Trustee via Court's Electronic Case Filing System on the date hereof. Copies were also served on the parties on the initial Master Service List, attached hereto as Exhibit D, on the date hereof.

15. Pursuant to Bankruptcy Rule 9006(c), cause exists for the Court to reduce and restrict notice in the manner requested herein due to (i) the Petitioning Creditors' immediate need to obtain the relief requested in the Trustee Motion and (ii) the absence of injury to any party that does not receive notice.

16. Further, cause also exists pursuant to 11 U.S.C. § 102(1) and Bankruptcy Rules 2002(b) and 9007 for the Court to limit the scope of notice to the interested parties on the Master Service List.

17. As certain cattle is currently in transit and because possession of said cattle by anyone other than the Debtor would be detrimental to the Debtor's estate, the Petitioning Creditors and other creditors, the imminent threat of irreparable harm is sufficient to authorize the reduction of the period of notice of the hearing on the Emergency Motions in the manner set forth herein.

WHEREFORE, for the reason set forth above, the Petitioning Creditors respectfully request that this Court grant the relief sought herein by: (a) allowing the Trustee Motion to be heard on Monday, December 13, 2010, at 1:30 p.m. Eastern Time; (b) determining that the notice period is appropriate in these circumstances; and (3) granting such other and further relief as the Court deems just and proper.

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that a hearing on the Trustee Motion shall be heard on Monday, December 13, 2010, at 1:30 p.m. Eastern Time before the United States Bankruptcy Court for the Southern District of Indiana, 121 West Spring Street, New Albany, Indiana 47150.

Respectfully submitted,

/s/ C.R. Bowles, Jr.

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 7<sup>th</sup>, 2010, a copy of the foregoing Expedited Hearing Motion was filed electronically. Notice of this filing will be sent through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

/s/ C.R. Bowles, Jr.

COUNSEL FOR THE PETITIONING  
CREDITORS